Supreme Court, U.S.

No. 92-1451

IN THE
Supreme Court of the United States
OCTOBER TERM, 1992

TRAVELLERS INTERNATIONAL AG.,
Petitioner,
v.
TRANS WORLD AIRLINES, INC.,
OFFICIAL UNSECURED CREDITORS' COMMITTEE
OF TRANS WORLD AIRLINES, INC., and
SUE L. ROBINSON, UNITED STATES DISTRICT JUDGE,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

SUPPLEMENTAL BRIEF OF PETITIONER

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Pursuant to Rule 15.7 of the Rules of this Court, petitioner invites the Court's attention to the newly decided case of *Germain v. Connecticut National Bank*, No. 92-5046, 61 U.S.L.W. 2598, 1993 WL 82702, 1993 U.S. App. Lexis 5815 (2d Cir. March 24, 1993), *suggestion for reh'g in banc pending*. In that case, the Second Circuit, in direct conflict with the Third Circuit decision addressed in this petition, concluded that the filing of a

proof of claim did not negate the parties' right to a jury trial in the debtor/trustee's action against the claimant unless "the resolution of the dispute in which a jury trial is sought . . . affect[s] the allowance of the creditor's claim." 1993 U.S. App. Lexis 5815 at *11.

In *Germain,* the trustee sued the debtor's primary lender, which had previously filed a claim against the bankruptcy estate, alleging several torts and breaches of contract. The bank objected to the trustee's demand for a jury trial, arguing, *inter alia,* that the right to a jury was irrelevant in an action against a creditor that had filed a proof of claim. The Second Circuit disagreed,

> [N]either precedent nor logic supports the proposition that either the creditor or the debtor automatically waives all right to a jury trial whenever a proof of claim is filed. For a waiver to occur, the dispute must be part of the claims-allowance process or affect the hierarchical reordering of creditors' claims. Even there, the right to a jury trial is lost not so much because it is waived, but because the legal dispute has been transformed into an equitable issue.

Id. at *22. This stands in stark contrast to the decision below, in which the Third Circuit held that the filing of *any* proof of claim works a waiver of the party's right to a jury trial.

The Second Circuit's extensive discourse on the public rights/private rights differentiation posed by the Article III issue also diverges markedly from the Third Circuit's perfunctory treatment, further highlighting the confusion that prevails in the courts of appeals on this important constitutional issue.

In sum, this new decision confirms that the questions presented in this petition continue to divide the courts of appeals and that there is an urgent need for further guidance from this Court.

Respectfully submitted,

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